Supreme Court, U.S.
FILED
AUG 15 1980
MICHAEL RODAK, JR., CLERK

No. 79-1320

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

---o---

RAYMOND KASSEL, ET AL.,
Appellants,

vs.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A DELAWARE CORPORATION,
Appellee.

---o---

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---o---

BRIEF OF THE CITY OF AUBURN, NEBRASKA AS AMICUS CURIAE

---o---

ALBERT G. FULLER
City Attorney
MCKNIGHT, HAHN, HAHN & FULLER
Auburn, Nebraska 68305
(402) 274-4321
Attorneys for the City of Auburn, Nebraska

GANT PUBLISHING COMPANY, 1610 N Street, Lincoln, Nebraska 68508

I.

ISSUES PRESENTED

1. Is Iowa's prohibition on 65-foot double bottoms a legitimate highway safety regulation to be accorded "a strong presumption of constitutionality" where Iowa's benefits accrue solely by the degradation of corresponding interests of other states?

TABLE OF CONTENTS

	Page
Opinion Below	2
Statement of the Case and Interest of Amicus Curiae	2
Summary of Argument	5
Argument	
I. The Iowa ban on 65-foot double bottoms thwarts national policy	6
II. Iowa's elected officials have proven unable to properly weigh the nation's interests against their own	9
Conclusion	14
Appendix I	15

PREVIOUS PAGE WAS BLANK

TABLE OF AUTHORITIES

Page

Cases

Baldwin v. GAF Seelig, Inc., 294 U.S. 511 (1935) ... 14
Consolidated Freightways v. Kassel et al., 475 F. Supp. 544 (1979) 3, 7
Consolidated Freightways v. Kassel et al., 612 F. 2d 1064 (1975) 2, 4, 14
Raymond Motor Transportation, Inc. v. Rice, 434 U. S. 429 (1978) 11
South Carolina Highway Dept. v. Barnwell Bros., Inc., 303 U. S. 177 (1938) 10, 11
Southern Pacific Co. v. Arizona, 325 U. S. 761 (1945) 13

Statutes

National Transportation Policy Act of 1941, § 722, Title I, § 1, 54 Stat. at 899 6
§ 321.10, Code of Iowa (1979) 11
§ 321.47, Code of Iowa (1980) 10
§ 321.451(5), Code of Iowa (1979) 11
§ 321.457, Code of Iowa (1980) 2
§ 321.457(5), Code of Iowa (1979) 2
§ 321.457(7), Code of Iowa (1979) 11

No. 79-1320

---o---

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

---o---

RAYMOND KASSEL, ET AL.,

Appellants,

vs.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A DELAWARE CORPORATION,

Appellee.

---o---

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---o---

BRIEF OF THE CITY OF AUBURN, NEBRASKA AS AMICUS CURIAE

---o---

The City of Auburn, Nebraska, as *amicus curiae*, submits this brief in support of Appellees. Auburn be-

lieves the decisions below should be affirmed.[f.n.]

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 612 F. 2d 1064 (8 Cir. 1979).

The opinion of the United States District Court for the Southern District of Iowa, is reported at 475 F. Supp. 544 (S.D. Iowa 1979).

STATEMENT OF THE CASE AND INTEREST OF AMICUS CURIAE

The State of Iowa restricts most combinations of truck and single trailer (semi trailers) and combinations of truck tractor and two trailers (also known as double bottoms or twin trailers) to 60 feet in total length; § 321.457, Code of Iowa (1980). Prior to May of 1980, Iowa had limited semi trailers to 55 feet in total length, except those semi trailers hauling livestock, farm vehicles or implements. Auto, boat, and implement carriers in Iowa are permitted in overall length, including overhang, of 65 feet; § 321.457(5), Code of Iowa (1979).

Consolidated Freightways Corporation (hereinafter "CF") is a regular route common carrier of general commodities operating in 48 states. CF regularly uses

---

f.n. City of Auburn is a political subdivision of the State of Nebraska within the meaning of Supreme Court Rule 36.4. In addition, all parties have consented to filing of this brief.

65-foot double bottoms in its interstate operation. The standard double bottoms used in interstate commerce are 65 feet long (A. 155-157). Although CF has operated some 60-foot double bottoms exclusively in Iowa, the trailers of the 60-foot double bottom are not standard and cannot, therefore, be interchanged (A. 600, 603, 276-277).

At trial, Consolidated Freightways submitted substantial evidence on the safety of 65-foot doubles, while Iowa argued the evidence on safety was inconclusive. The trial court concluded:

> "The evidence convincingly, if not overwhelmingly, establishes that the 65-foot twin is as safe as, if not safer than, the 60-foot twin and the 55-foot semi." *Consolidated Freightways v. Kassel*, 475 F. Supp. 544, 548 (1979).[1]

Iowa had also defended its ban by arguing that even if the 65-foot doubles were as safe as other vehicles, it had the prerogative to ban doubles in order to reduce traffic in the State of Iowa. The trial court held this to be a "legitimate local concern" but balanced it against the increase in traffic the ban caused elsewhere. The trial court found these local concerns to be "outweighed by the burden" the ban placed on interstate commerce. *Consolidated Freightways v. Kassel*, 475 F. Supp. at 551.

The Court of Appeals for the Eighth Circuit affirmed the trial court and specifically noted that Iowa's attempt to reduce traffic was an indirect safety measure

---

[1] The District Court also found that on the type of highway predominent in Iowa, doubles caused less roadwear per vehicle than did semis. *Consolidated Freightways v. Kassel*, 475 F. Supp. at 554.

and ruled that such a measure must "automatically" give way to the "countervailing safety interest in other states," when those countervailing interests were greater. *Consolidated Freightways v. Kassel*, 612 F. 2d 1064, 1069-1070 (1979).[2]

On appeal before this Court, the State of Iowa argues deference for its legislative judgment. It argues that this policy is founded on a safety judgment pertaining solely to the added length of 65-foot double bottoms — as opposed to their configuration. Iowa has also abandoned its argument that it may reduce highway traffic by diverting interstate traffic.[3]

Auburn's interest in the subject of this proceeding arose before the commencement of this lawsuit. The City of Auburn, population 3,650, is located in southeastern Nebraska, at the junction of U.S. Highway 136 and 73/75. Its location puts Auburn on the main diversion route used by 65-foot double bottoms shunted around Iowa as the result of the Iowa limits. By 1976, an estimated 177 doubles *per day* were passing through downtown Auburn solely as the result of Iowa length limitations (A. 84, 581). This large volume of heavy commercial vehicles has had a devastating effect on

---

[2] The Amicus brief of the Association of American Railroads suggests that the appellate court balanced Iowa's interest in reducing highway traffic against "the national interest implicit in unrestricted interstate commerce." (A.A.R. Brief, p. 5). Yet the context of the appellate court's discussion shows the court was balancing Iowa's interests against the adverse safety impact on other states, not the commercial interest of appellees.

[3] The AAR has reintroduced the diversion argument in its brief (AAR Brief, p. 18).

the main city streets of Auburn. The complete reconstruction of these streets is now necessary and will hopefully commence within the year.[4]

Since August, 1979, when the injunction was first entered by the District Court, there has been a marked reduction in double bottom and other truck traffic through Auburn. Presumably, these trucks are now crossing Iowa on Interstate 80 (A. 581).

As one might expect, large trucks still go through downtown Auburn, albeit at a much lower rate per day. It would obviously be desirable, in some respects, to eliminate all truck traffic through Auburn, but such trucks carry the nation's commerce and are a necessary part of our national economy. Auburn is willing to share its fair portion of the truck traffic for the general good of the country. Auburn's participation in these proceedings is merely to suggest that Iowa might do the same.

SUMMARY OF ARGUMENT

The nation's interests in promoting efficient, economical, and safe transportation must be considered when judging the validity of the interests an individual state advances on its own behalf when justifying a highway traffic regulation. Where a highway traffic regulation has an adverse impact outside of the state

---

[4] See the testimony of Thomas D. Doyle, former Director-State Engineer for the Nebraska Highway Department (A. 84). Auburn also filed an affidavit, reproduced here as Appendix I, by our Mayor, John George attached to the Motion for Leave to File Brief Amicus Curiae before the 8th Circuit Court of Appeals.

of its enactment, that adverse impact is part of the burden on interstate commerce. Here, that adverse impact includes additional accidents, road wear, fuel consumption, and economic inefficiencies. These burdens affect the citizens of Auburn, Nebraska.

In the case at hand, it is evident that 65-foot double bottoms are identified with interstate commerce rather than local carriage. The parochial vantage point of Iowa's elected officials render them unable to properly respond to this issue. As such, this court, and not Iowa elected officials, should act as the final arbitrator of the competing demands of state and national interests.

ARGUMENT

I.

The Iowa ban on 65-foot twin trailers thwarts national policy.

In 1941, Congress enacted the National Transportation Policy, which states in part:

> "It is hereby declared to be the national transportation policy of Congress . . . to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation. . . ." *National Transportation Policy Act of 1941*, § 722, Title I, § 1, 54 Stat. at 899.

The overall effect of Iowa's ban on 65-foot double bottoms is to undercut one national transportation policy. As the trial court concluded:

> ". . . Iowa's length restriction causes the trucks affected by the ban to travel more

> miles over more dangerous roads in other states which means a greater overall exposure to accidents and fatalities. More miles of highway are subject to wear, and more fuel is consumed, and greater transportation costs are incurred." *Consolidated Freightways v. Kassel*, 475 F. Supp. 544, 550 (1979).

These findings are literally undisputed. At the hearing on the Motion for Stay Pending Appeal, District Court Judge Stuart challenged counsel for the state to contradict any of the findings, if he could. The state's attorney was unable to do so:

> "THE COURT: I don't follow your safety argument at all when the record is clear, number one, that diversion causes vehicles to go more miles. More miles is a function of accidents.
>
> "The record is also clear that [I]nterstates are safer than two-lane highways. It makes it very clear that diversions result in more accidents, more fatalities, more consumption of fuel.
>
> "Now, I'm not in a position to tell all of the truckers that they must operate 55 foot semis. The safety argument, I just can't accept it, when you look at the overall safety. There are going to be more deaths, and there is going to be more fuel consumption.
>
> "Do you argue with that?
>
> "MR. PAFF: Your Honor, I know the point is that the diversion is caused — I think that our point of difference is basically what is bringing about the diversion of the traffic.
>
> "Missouri has a legislative process. Iowa has a legislative process. Illinois has a legislative process. It seems to me that what the Missouri legislature chooses to accept for its

> citizens — And there is absolutely no evidence in the record that increased — I agree with you that it is a function of miles, but it seems to me that what one state has chosen does not preclude Iowa, particularly —
>
> "THE COURT: Do you want me to reverse Raymond?
>
> "MR. PAFF: Well, that would help, Your Honor. We'll try.
>
> [Transcript, Hearing on Defendant's Motion for Stay Pending Appeal, p. 13-14].

It is not surprising that Iowa prefers to sidestep and ignore the factual issues. Even Iowa's own study which concluded that there was a net loss to *overall* highway safety from Iowa's unique length limit (A. 594).

The only tangible benefit Iowa can obtain from its ban on doubles is the reduction of its traffic volume. Reducing traffic volume thus reduces road wear and the potential exposure to accidents. Iowa is well aware that this reduction in traffic volume arises simply by diverting that traffic to circuitous bypass routes around Iowa, such as the one through Auburn (A. 175, 244-245, 581). The additional mileage caused by this indirect routing results in more highway deterioration and a greater exposure to accidents. These effects occur in the surrounding states and are incurred by the interstate traffic (A. 259). Thus, there is a direct burden on interstate commerce in terms of accidents, injuries, and highway wear.

The Interstate Highway System was designed to ASHTO [American Association of State Highway and Transportation Officials] specifications to support large commercial vehicles [Tr. Ex. 3]. The highways on the diversion routes, such as the cobblestone and

asphalt portions through Auburn, do not necessarily meet the same high structural standards. Thus, the impact of the individual vehicles is greater on the diversion route due the lesser quality of roadway structures.

Moreover, the ability to move in interstate commerce is now more than ever tied to the availability of fuel. There is no disagreement on the fact that Iowa's refusal to permit 65-foot double bottoms forces large additional amounts of fuel to be consumed. The Iowa Department of Transportation estimated that 7 million gallons of fuel per year could be saved by eliminating the ban (A. 599). Thus, Iowa's ban runs counter to the spirit of both national transportation policy and national energy goals.

In evaluating the burden on interstate commerce, one must consider the effects Iowa's ban has on other states and other communities outside of Iowa. While Consolidated Freightways may feel an economic burden from the additional expense and disruption it suffers in its trucking business, it is the citizens of all states that pay for the unsafe, uneconomical, and inefficient service the Iowa ban fosters. In the balance, each of the benefits Iowa seeks to gain is outweighed by a corresponding detriment to the nation's interests.

II.

Iowa's elected officials have proven unable to properly weigh the nation's interests against their own.

Before this Court, Iowa claims that it bans 65-foot doubles solely because of their length. Yet, Iowa per-

mits 65-foot double bottoms in commercial zones surrounding border cities and permits 65-foot auto carriers throughout the state; § 321.47 Code of Iowa (1980).

In *South Carolina Highway Dept. v. Barnwell Bros., Inc.*, 303 U.S. 177 (1938), the court anticipated that unreasonable or discriminatory restrictions on interstate commerce would be avoided because such restrictions would apply equally to local carriage. The burden on local interests would provide the internal political impetus to remove any unreasonable restrictions. However, *Barnwell* also recognized that:

> "State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought to impinge upon the constitutional prohibition even though Congress has not acted. [Citations omitted.]
>
> "Underlying the stated rule has been the thought, often expressed in judicial opinion, that when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state." [Citations omitted.] (*South Carolina v. Barnwell Bros, Inc.*, 303 U.S. pp. 184-185, note 2.)

Iowa has diminished this internal check and balance system by a series of exemptions that have allowed local interests to be free from the burdensome length limitations. These exemptions underwent the normal

"strong presumption of validity" that attaches to state highway safety regulations; *Raymond Motor Transportation v. Rice*, 434 U.S. 429 (1978).

For example, transportation costs for automobiles, and presumably the ultimate sale price, have been reduced by allowing automobile transporters additional length per vehicle, Section 321.451(5), Code of Iowa, 1979. Thus, the Motor Club of Iowa is free to oppose any further truck length increases, if it so desires.

Pressure from truck trailer manufacturers is also eliminated since 65-foot double bottoms manufactured in Iowa can be moved in tandem out of the state, § 321 E.10, Code of Iowa (1979). Similarly, small companies and manufacturers in border cities have the benefit of prompt twin trailer service to the west and east as a result of the border cities exemption. § 321.457(7), Code of Iowa (1979) [A. 618]. Finally, Iowa's extensive agricultural exemptions are tailored to the needs of Iowa's agricultural economy and thus dissuade that political base from advocating any general length increases [A. 617-621].

The only persons who are still affected by the 65-foot double bottom ban are the interstate motor carriers who operate 65-foot doubles, and the citizens of Illinois, Missouri, Kansas and Nebraska, who feel the effects of the diverted traffic. Neither of these groups have sufficient political influence in the State of Iowa to effect further change. The political check and balance anticipated in *Barnwell* is undermined and the resulting analysis of Iowa's decision-makers is distorted.

The inordinate weight accorded to Iowa's local interests has been evident at each stage of Iowa's consid-

eration of truck length limits. The 1975 Iowa study is organized in a fashion that compares Iowa's interests as opposed to the nation's interests [A. 580-601]. In that study Iowa's DOT did a comprehensive review of both the local and national benefits. In each instance local benefits tended to be nominal; although in the case of increased highway traffic, there was a local disadvantage. On the other hand, the Nation's benefits were substantial. Nonetheless, Iowa failed to legalize 65-foot doubles.

From the deposition and trial testimony of Iowa's Governor Ray, it is evident that this form of decision-making carried through to his veto of the 65-foot twin trailer legislation. Governor Ray clearly identified 65-foot doubles as benefiting solely interstate traffic and out-of-state interests (A. 176, 180). As such, he saw no reason for permitting them in Iowa:

> "Q. The conclusion of your veto message in 1974 was basically that sixty-five foot twin trailers were a greater advantage to interests outside the State of Iowa and would not have much benefit to the interests inside the State of Iowa. Is that a correct statement of that position?
>
> A. I view my job as one to protect the best interest of the people of my state, and in doing so, I have to take into consideration, I think, the safety, the well-being, and the convenience of the people that live here." [A. 185-186]

Governor Ray effectively responded to the limited interests of his constituency. In doing so, he ignored the interests of surrounding states and communities such as Auburn.

Iowa now asserts that its sole purpose in banning

65-foot doubles is to promote safety. It is clear from the Iowa study and Governor Ray's testimony that economic considerations were given at least equal stature in the decision-making process. In that process, the nation's economic and safety interests were not given their proper weight in the comparison with the local interests.

In *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), this Court recognized that there was an infinite variety of cases in which local regulations also operate to regulate the nation's commerce. When that occurs, a reconciliation of the conflicting claims of state and national power was necessary. As Justice Stone stated,

> "For a hundred years it has been accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation, thus affords some protection from state legislation inimical to the national commerce, and that in such cases, where Congress has not acted, this Court, and not the state legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests. [Citations omitted.]" *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 769 (1945).

The State of Iowa asks this Court to give deference to its elected officials' decision to ban 65-foot doubles. Review of the decision-making process shows that Iowa is consciously attempting to retain a nominal local advantage at the substantial expense of its sister states. Auburn believes that this is not a legitimate state prerogative to be allowed deference in judging it against the burden on interstate commerce. Even if such deference were allowed, the burden on interstate

commerce includes the greater adverse safety effect upon Iowa's sister states. As the appellate court concluded, in such an instance, the weighing of competing interests is "automatic," 612 F. 2d at 1069-1070.

CONCLUSION

Apart from the economic burden on Appellee, Iowa's ban creates a burden on interstate commerce through the degradation of overall highway traffic safety, undue road wear on the nation's highways, and wasteful use of this nation's limited fuel resources. The State of Iowa is unwilling to properly weigh and consider the interests of the nation and its sister states. In such an instance, it is appropriate that this Court arbitrate the competing state and national interests. As Justice Cardozo summed up:

> "The Constitution was framed under the dominion of a political philosophy far less parochial in range. It was framed under the theory that the peoples of the several states must sink or swim together, and that in the long run, prosperity and salvation are in union and not division." *Baldwin v. GAF Seelig, Inc.*, 294 U.S. 511, 523 (1935).

For these reasons, the City of Auburn urges that the decision of the 8th Circuit Court of Appeals be affirmed.

Respectfully submitted,

ALBERT G. FULLER
McKNIGHT, HAHN, HAHN & FULLER
Auburn, Nebraska 68305
Attorneys for City of Auburn, Nebraska

APPENDIX I

AFFIDAVIT

STATE OF NEBRASKA)
) ss.
COUNTY OF NEMAHA)

John George, being first duly sworn on oath, deposes and says:

(1) He is the Mayor of Auburn, Nebraska, a second-class city pursuant to Nebraska Revised Statutes § 17-107.

(2) This affidavit is made to support the *amicus* brief of the City of Auburn in opposition to the requested stay of Appellants who represent the State of Iowa.

(3) Auburn, Nebraska has a population of approximately 3,650, and is located in the southeastern portion of Nebraska. (See attached map).

(4) U. S. Highways 136 and 73/75 intersect in the center of Auburn.

(5) Within the City limits of Auburn, U.S. 136 is known as Central Avenue, and U.S. 73/75 is known as "J" Street.

(6) The intersection of Central Avenue and "J" Street in downtown Auburn is a busy intersection and has the only stoplight in the City.

(7) Central Avenue and "J" Street, approaching their intersection, are two-lane roadways with angle parking on either side.

(8) The downtown streets of Auburn were originally cobblestone, but were given an asphalt overlay approximately ten years ago.

(9) The volume of heavy commercial vehicle traffic, mostly made up of double-bottom trucks diverting around the State of Iowa due to Iowa's length limits, have caused considerable damage to Central Avenue and "J" Street in Auburn.

(10) As the result of this large volume of truck traffic, it is anticipated that Central Avenue and "J" Street will need to be completely reconstructed within the next two years.

(11) During the pendency of such construction, detour routes will be necessary, but the City has been unable to find an adequate detour route to date to accommodate the volume of truck traffic now experienced.

(12) For the past years, Auburn, Nebraska, has had a considerable and growing number of double-bottom trucks traveling through its downtown area as a result of diversion operations caused by the Iowa statutes.

(13) During the period between the entry of the injunction and the temporary stay, the volume of truck traffic through Auburn declined markedly.

(14) The most direct geographic route between points in northern Illinois and points in Nebraska is not through Auburn, Nebraska, but across Interstate 80 in Iowa.

(15) The grant of the stay will have a tremendous adverse effect on Auburn, Nebraska in that it will result in substantial difficulties in locating a detour route during road repairs necessitated by the volume of truck traffic diverted around the State of Iowa and will further deteriorate the main downtown streets of Auburn.

(16) This additional and *unnecessary* truck traffic also exposes the residents of Auburn to an increased likelihood of accidents and injuries.

Dated this 27th day of August, 1979.

John George, Mayor
Auburn, Nebraska

Subscribed and sworn to before me this 29th day of August, 1979. My commission expires: July 22, 1980.

Eunice M. Bradley, Notary Public
State of Nebraska

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

79-1320

RAYMOND KASSEL, ET AL.,
Appellants,

vs.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A DELAWARE CORPORATION,
Appellee.

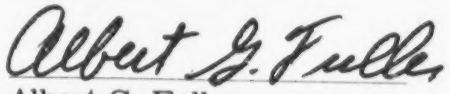
ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CERTIFICATE OF SERVICE

I hereby certify that the Brief of the City of Auburn as *Amicus Curiae* has been served upon the parties by mailing three copies each this 13th day of August, 1980, to their respective counsel, as follows:

HONORABLE THOMAS J. MILLER
Attorney General of Iowa
Hoover State Office Building
Des Moines, Iowa 50312
(Counsel for Appellants)

JOHN H. LEDERER, Esquire
121 South Pinckney Street
Madison, Wisconsin 53703
(Counsel for Appellee)



Albert G. Fuller